

ORIGINIAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JUDGE SWAIN

UNITED STATES OF AMERICA :  
- v. - :  
RICHARD CUNNIFFE, :  
Defendant. :  
----- xSEALED INFORMATION

15 Cr. 15CRIM 287

COUNT ONE(Conspiracy to Commit Securities Fraud and  
Fraud in Connection with a Tender Offer)

The United States Attorney charges:

1. From in or about February 2011 through in or about April 2015, in the Southern District of New York and elsewhere, RICHARD CUNNIFFE, the defendant, and others known and unknown, willfully and knowingly combined, conspired, confederated, and agreed together and with each other to commit offenses against the United States, to wit, (a) securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2; and (b) fraud in connection with a tender offer, in violation of Title 15, United States Code, Sections 78n(e) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.14e-3(a) and 240.14e-3(d).

Objects of the Conspiracy

2. It was a part and object of the conspiracy that

RICHARD CUNNIFFE, the defendant, and others known and unknown, willfully and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2 by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, CUNNIFFE and others known and unknown conspired to commit insider trading in connection with the securities of Kindle International Inc. ("Kindle"), Kinetic Concepts, Inc. ("KCI"), Gen-Probe Inc. ("Gen-Probe"), Lincare Holdings, Inc. ("Lincare"), and CareFusion Corp. ("CareFusion").

3. It was a further part and an object of the conspiracy that RICHARD CUNNIFFE, the defendant, and others known and unknown, willfully and knowingly would and did engage in fraudulent, deceptive, and manipulative acts and practices in connection with a tender offer, in that after an offering person

had taken substantial steps to commence a tender offer, CUNNIFFE, while in possession of material information relating to such tender offer, which information he knew and had reason to know was non-public and which he knew and had reason to know had been acquired directly and indirectly from the offering person, the issuer of the securities sought and to be sought by such tender offer, and an officer, director, partner, and employee and other person acting on behalf of the offering person and such issuer, would and did purchase and sell and cause to be purchased and sold such securities and securities convertible into and exchangeable for such securities and options and rights to obtain and to dispose of any of the foregoing securities, without publicly disclosing by press release and otherwise such material, non-public information within a reasonable time prior to such purchase and sale, in violation of Title 15, United States Code, Sections 78n(e) and 78ff; and Title 17, Code of Federal Regulations, Sections 240.14e-3(a) and 240.14e-3(d), to wit, CUNNIFFE and others known and unknown conspired to commit insider trading in connection with the proposed tender offer by Linde AG ("Linde") for the securities of Lincare.

Overt Acts

4. In furtherance of the conspiracy, and to effect the illegal objects thereof, RICHARD CUNNIFFE, the defendant, and

others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

- a. On or about March 2, 2011, a co-conspirator not named as a defendant herein ("CC-1") e-mailed a colleague to ask about the price of Kindle stock.
- b. On or about March 3, 2011, another co-conspirator not named as a defendant herein ("CC-2") e-mailed an employee of a brokerage firm with directions to buy Kindle shares.
- c. On or about June 2, 2011, CC-2, using the proceeds of the sale of Kindle stock, paid a check in the amount of \$10,055 to a photographer who had been hired for the wedding of CC-1.
- d. On or about June 3, 2011, the day of CC-1's wedding, CUNNIFFE spoke to CC-2 by telephone.
- e. Also on or about June 3, 2011, approximately six minutes after the end of the call described in the foregoing paragraph, CUNNIFFE purchased KCI call option contracts.
- f. On or about April 20, 2012, CUNNIFFE placed an order to purchase Gen-Probe call option contracts.
- g. On or about Sunday, May 27, 2012, CC-1 and CC-2 spoke by telephone for approximately two and a half minutes.

h. On or about May 28, 2012, at or about the same time as a telephone call between CUNNIFFE and CC-2, CUNNIFFE began entering orders to buy Lincare call option contracts.

i. On or about August 19, 2014, CUNNIFFE met CC-2 in Manhattan, New York.

j. Also on or about August 19, 2014, CUNNIFFE placed an order to purchase CareFusion call option contracts.

k. On or about March 24, 2015, in midtown Manhattan, CUNNIFFE paid CC-2 \$2,500 in cash proceeds from investments in CareFusion securities.

(Title 18, United States Code, Section 371; Title 15, United States Code, Sections 78j(b), 78n(e), and 78ff; Title 17, Code of Federal Regulations, Sections 240.10b-5, 240.10b5-2, 240.14e-3(a), and 240.14e-3(d).)

COUNT TWO  
**(Conspiracy to Commit Wire Fraud)**

The United States Attorney further charges:

5. From in or about February 2011 through in or about April 2015, in the Southern District of New York and elsewhere, RICHARD CUNNIFFE, the defendant, and others known and unknown, willfully and knowingly combined, conspired, confederated, and agreed together and with each other to commit an offense against the United States of America, to wit, wire fraud, in violation of Title 18, United States Code, Section 1343.

6. It was a part and an object of the conspiracy that RICHARD CUNNIFFE, the defendant, and others known and unknown,

willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire communication in interstate commerce writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343, to wit, CUNNIFFE and others conspired to defraud Kindle, KCI, Gen-Probe, Lincare, and CareFusion of valuable confidential information by deceptively converting that information to their own use in breach of fiduciary and other duties owed to the subject companies.

(Title 18, United States Code, Section 1349.)

**COUNTS THREE through FIVE**  
**(Securities Fraud)**

The United States Attorney further charges:

7. From at least in or about April 2012 through at least in or about October 2014, in the Southern District of New York and elsewhere, RICHARD CUNNIFFE, the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails and the facilities of national securities exchanges, in connection with the purchase and sale of securities, used and employed manipulative and deceptive devices and contrivances, in

violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, on the basis of material, non-public information supplied to him by CC-2, CUNNIFFE executed the securities transactions listed below on or about the dates listed below.

Count	Order Dates	Transactions
3	April 18-27, 2012	Purchases of 320 Gen-Probe call option contracts
4	May 29-June 28, 2012	Purchases of 375 Lincare call option contracts
5	August 19-October 2, 2014	Purchase of 630 CareFusion call option contracts

(Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Sections 240.10b-5 & 240.10b5-2, and Title 18, United States Code, Section 2.)

COUNT SIX  
**(Securities Fraud in Connection with a Tender Offer)**

The United States Attorney further charges:

8. From in or about May 2012 through in or about June 2012, in the Southern District of New York and elsewhere, RICHARD CUNNIFFE, the defendant, willfully and knowingly engaged

in fraudulent, deceptive, and manipulative acts and practices in connection with a tender offer, in that after an offering person had taken substantial steps to commence a tender offer, CUNNIFFE, while in possession of material information relating to such tender offer, which information he knew and had reason to know was non-public and which he knew and had reason to know had been acquired directly and indirectly from the offering person, the issuer of the securities sought and to be sought by such tender offer, and an officer, director, partner, and employee and other person acting on behalf of the offering person and such issuer, purchased and sold and caused to be purchased and sold such securities and securities convertible into and exchangeable for such securities and options and rights to obtain and to dispose of any of the foregoing securities, without publicly disclosing by press release and otherwise such material, non-public information within a reasonable time prior to such purchase and sale, to wit, on the basis of material, non-public information that CUNNIFFE received from CC-2 in connection with a tender offer by Linde for the securities of Lincare, CUNNIFFE executed the securities transactions listed below on or about the dates listed below.

Count	Order Dates	Transactions
6	May 29- June 28, 2012	Purchases of 375 Lincare call option contracts

(Title 15, United States Code, Sections 78n(e) & 78ff;

Title 17, Code of Federal Regulations, Sections 240.14e-3(a) & 240.14e-3(d), and Title 18, United States Code, Section 2.)

**FORFEITURE ALLEGATION**

19. As a result of committing one or more of the offenses alleged in Counts One through Six of this Information, RICHARD CUNNIFFE, the defendant, shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(c) and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses, to wit, a sum of money equal to \$900,000 in United States currency.

**Substitute Assets Provision**

20. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 18, United States Code, Section 981; Title 28, United States Code, Section 2461; and Title 15, United States Code, Sections 78j(b), 78n(e), and 78ff; Title 17, Code of Federal Regulations, Sections 240.10b-5, 240.10b5-2, 240.14e-3(a), and 240.14e-3(d); and Title 18, United States Code, Section 2.)

Preet Bharara  
PREET BHARARA  
United States Attorney